

IN THE MATTER OF A BOARD OF INQUIRY UNDER THE HUMAN RIGHTS CODE,
Statutes of Ontario, 1981, Chapter 53, as amended.

MR. DONOVAN SHEPHERD

Complainant

- and -

BAMA ARTISANS INC. c.o.b. as PIT MARTIN'S SPORTS BAR AND
RESTAURANT and as PIT MARTIN'S and DANCE MUSIC DISC JOCKEY
SERVICE and LUIGI LISI

BOARD OF INQUIRY: Constance B. Backhouse

APPEARANCES:

Counsel for the Ontario Human
Rights Commission:

Mr. Stephen Mason

Counsel for Bama Artisans Inc.:

Mr. Pasquale Iannetta

Appearing for Dance Music Disc
Jockey Service & Luigi Lisi:

Mr. Luigi Lisi, personally

HEARINGS:

22 March 1988, Windsor, Ontario
12 April 1988, Windsor, Ontario

On 22 February 1988, I was appointed to serve as a Board of Inquiry by the Minister of Citizenship pursuant to the Ontario Human Rights Code, 1981 to hear the complaint made by Mr. Donovan Shepherd against Bama Artisans Inc., carrying on business as Pit Martin's Sports Bar and Restaurant and as Pit Martin's and Dance Music Disc Jockey Service and Mr. Luigi Lisi. The complainant alleges that his right to equal treatment with respect to services was infringed on the grounds of race and colour, contrary to sections 1, 8 and 10 of the Code.

PRELIMINARY MATTERS

At the outset of the hearing, counsel for Bama Artisans Inc. raised three preliminary objections.

1) Limitations Act

First he argued that the proceedings should be barred by s.45(1)(h) of the Limitations Act, which deals with "an action for a penalty, damages, or a sum of money given by any statute to the Crown or the party aggrieved", and species a limitation period of two years.

The incidents giving rise to this complaint occurred on or about the 3rd of February 1984. The complainant lodged his

complaint with the Ontario Human Rights Commission on 22 February 1984. At that time, the respondent was named as "Pit Martin's Sports Bar and Restaurant, its servants and agents". In May 1984, the respondent notified the Commission that the corporation, Bama Artisans Inc., was the proper party. In June 1984, a fact-finding meeting was held. In attendance were representatives of Bama Artisans Inc. and Mr. Luigi Lisi, representing himself and Dance Music Disc Jockey Service. It was not until 24 June 1987 that the complaint was amended, and then the respondents were named as "Pit Martin's Sports Bar and Restaurant, Pit Martin, Dance Music Disc Jockey Service and Mr. Luigi Lisi." Bama Artisans Inc. was not named as a respondent until a second amendment was made to the complaint on 12 December 1987.

Counsel for Bama Artisans Inc. argued that the introduction of Bama Artisans Inc., some three years and ten months after the original complaint, should be barred by the Limitations Act. Counsel for the Commission argued that if the Limitations Act applied, which he did not concede, that there had been no prejudice to the respondents. All of the present parties were represented at the fact-finding conference in 1984. Mr. Hubert Martin, who was the sole director and shareholder of Bama Artisans Inc. was present, as was Mr. Lisi. All were on notice of the complaint against them. They knew the circumstances of the complaint and were able to contact witnesses, preserve

evidence and put their minds to a defence.

The question of whether the Limitations Act applies to proceedings under the Ontario Human Rights Code is presently before the courts. In Re West Lake Construction Ltd. (1986), 57 O.R. (2d) 391, the Divisional Court held that the Limitations Act did apply to the Ontario Human Rights Code, R.S.O. 1980, c.340, since a complaint of discrimination under the Code was "a civil proceeding" and thus "an action" within s.1(a) of the Limitations Act. Counsel for the Commission argued that the present case was brought under the 1981 Code, which had been amended from the 1980 version upon which West Lake was decided. His position was that the Limitations Act was inapplicable to the 1981 Code. Counsel for the Commission informed me that this matter is apparently before the courts from another Board of Inquiry decision in which the chair had ruled that the Limitations Act was inapplicable.

Fortunately, the present case does not require me to decide the difficult question of whether the Limitations Act is applicable to administrative proceedings under the Ontario Human Rights Code. Even if the Act is applicable, I think this is the type of case which can be distinguished from the situation in West Lake Construction. In the latter case, the original complaint was not lodged until the two year limitation period had expired. In this case, Mr. Donovan Shepherd made his complaint within the two year period, and all of the present parties were

in attendance at a fact-finding hearing within the two year period. The complaint itself may have been technically inaccurate in naming the parties, but it is difficult for the respondents to argue that they were prejudiced in this respect.

They were fully aware of the nature and circumstances of the allegations. They had full opportunity to amass and present evidence, contact witnesses and formulate a defence. Indeed the respondent's counsel did not attempt to argue that his client had been prejudiced in this respect. It is regrettable that the Commission failed to amend the complaint until 1987, but this failure to do so is not fatal to the complainant's claim. The Code itself recognizes that parties may be added by a board of inquiry "at any stage of the proceeding". (s.38(3)) The legislative preference is for a full hearing of these cases, and I am of the view that the Limitations Act does not intervene to prevent this in this situation.

Before moving on to the second preliminary objection, it should be noted that near the end of the hearing an additional corporation was identified as possibly involved in these matters. Mr. Hubert Martin, President of Bama Artisans Inc., testified that he was president and sole shareholder of two corporations - Bama Artisans and Martin Batten. Under examination-in-chief, Mr. Martin testified that Bama Artisans Inc. ran the premises known as Pit Martin's Sports Bar and Restaurant. Under cross-

examination, Martin contradicted this statement, testifying that Bama owned the building, but that Martin Batten operated the restaurant. The latter statement was made with hesitation, and some apparent difficulty in recall. After hearing the witness, I have determined that the former statement, that Bama Artisans Inc. ran the bar and restaurant business, is more credible. There was no specific motion to amend the complaint at this point to add Martin Batten, and thus I have not attempted to expand the list of respondents further at this point. In view of my finding of fact concerning Bama Artisans Inc.'s responsibility for the operation, there is no need to do so.

2) The Charter of Rights and Freedoms, s.11

The second preliminary objection related to the Charter. Section 11 of the Charter provides that any person charged with an offence has the right to be tried within a reasonable time. Counsel for Bama Artisans Inc. argued that the hearing commenced some four years and one month after the original complaint was lodged, and that this constituted undue delay without reasonable explanation. He requested that the tribunal move to stay the proceedings under s.24(1) of the Charter of Rights and Freedoms.

In my opinion, s. 11 of the Charter is not applicable to the

present proceeding. The Human Rights Code does permit prosecutions under s.43 where the Attorney-General has consented to this avenue of enforcement. The present hearing, however, is in front of an administrative tribunal, and is a purely civil, compensatory proceeding. The characterization of human rights tribunal proceedings as compensatory, rather than punitive, is well-settled in the courts. See Ontario Human Rights Commission and O'Malley v. Simpsons Sears Ltd. (1986), 7 C.H.R.R. D/3102, MacBain v. Canadian Human Rights Commission et al., 11 D.L.R. (4th) 202 (F.C.T.D.), Re Commodore Business Machines Ltd. et al. and the Minister of Labour for Ontario et al., (1985) 14 D.L.R. (4th) 118 (Ont. Div'nal Ct.), Kodellas v. Saskatchewan Human Rights Commission (1987), 8 C.H.R.R. D/3712 (Sask. Q.B.).

3) Abuse of Process, Statutory Powers Procedure Act

The third preliminary objection was also based on the delay between the alleged incidents and the commencement of this hearing. Counsel for Bama Artisans Inc. argued that under the Statutory Powers Procedure Act, s.23(1), a board of inquiry had the power to make such orders as it considered proper to prevent the abuse of its processes. Given the lengthy and unreasonable delay, he requested this jurisdiction be exercised to stop the proceeding.

This type of argument has been made before other boards of inquiry. In particular, Board of Inquiry Chair John D. McCamus had the following to say in Hyman v. Southam Murray Printing Division (1982) 3 C.H.R.R. D/617 at D/621:

My own view is that while unreasonable delay might be a factor to be taken into account in refusing or fashioning a remedy...or in weighing the persuasive force or credibility of testimony or other evidence, delay in initiating or processing a complaint should not be considered a basis for dismissing the complaint at the outset of the proceedings before a board of inquiry unless it has given rise to a situation in which the board of inquiry is of the view that the facts relating to the incident in question cannot be established with sufficient certainty to constitute the basis of a determination that a contravention of the Code has occurred. Having been assigned, by order of the Minister of Labour, a statutorily defined task of undertaking an inquiry to ascertain certain facts, the board of inquiry should proceed to attempt to do so, notwithstanding the passage of considerable time, unless the passage of time has made fulfillment of its task impossible. In the absence of such, admittedly unlikely, circumstances, the proper course, in my opinion, is for the board of inquiry to proceed and to weigh the prejudice or unfairness to a particular party which may have been occasioned by delay in making particular findings of fact or in refusing or fashioning a remedy.

(See also Bahjat Tabar and Chong Man Lee v. David Scott and West End Construction Ltd. (1982) 3 C.H.R.R. D/1073 and B.L. Mears et al. v. Ontario Hydro et al., (1984) 5 C.H.R.R. D/1927.)

I believe that this is the proper approach to take in this case, and thus decline to stop these proceedings as an abuse of process under s.23(1) of the Statutory Powers Procedure Act. The delay in this case is troubling, and it seems to be a not atypical feature of many human rights proceedings. The parties, complainants and respondents alike, deserve to have these matters

determined expeditiously and there is also considerable public interest in the quick and efficient resolution of human rights issues. Improvements must be made to reduce the delay attendant on these proceedings. The answer to this dilemma, however, does not lie in the dismissal of a present complaint such as this.

THE EVIDENCE

Pit Martin's Sports Bar and Restaurant (operated by Bama Artisans Inc.) was a licensed bar and restaurant located in downtown Windsor, Ontario, which was in operation from April 1982 to July 1984. The premises also contained a back room, initially used as a party room for private parties. Subsequently the back room was turned into a dance area where a disc jockey played music in the evenings. The back room had a service bar in the corner and was licensed for approximately 110 people. The only entrance to the back room was from the larger open bar area.

The owner of the operation, Mr. Hubert Martin, became concerned over time about the revenue generated by the back room. Specifically, some of the back room patrons were doing more dancing than drinking. In response Martin introduced a \$5.00 minimum charge for admission to the back room. Although this fee was generally referred to as a "cover charge", patrons received two tickets for drinks, redeemable at the bar in the back room.

Mr. Martin explained why the admission charge was needed:

"Well, to keep loiterers from going back there, you know, basically, because it's a small room and if you have, you know, a hundred people in there and half of them just walk back there and don't purchase drinks or anything, and just avail themselves of our disc jockey service and our dance floor then, you know, we're not a YMCA... we're in there to...do business."

The demand to get into the back room was sometimes more than the room could accommodate, and line-ups would form within the main restaurant/bar premises at the entrance to the back room. Doormen hired by Mr. Martin would supervise the lines and admit patrons as space became available.

The disc jockey operations were not specifically part of Mr. Martin's corporation. Instead he was in the practice of contracting with disc jockey businesses for these services. At the time in question he had retained Dance Music Disc Jockey Service, run by Mr. Luigi Lisi. Mr. Lisi would contract to play recorded music in the back room for a specified number of nights a week at a weekly fee. Approximately 70% of the time Mr. Lisi acted as the disc jockey personally. The rest of the time Mr. Lisi supplied other disc jockeys to work as required.

The complainant, Mr. Donovan Shepherd, testified that on three separate incidents he had been discriminated against because of race or colour at the hands of Mr. Martin's

doormen and Mr. Luigi Lisi.

The incident which gave rise to the complaint occurred on Friday, 3 February 1984. Mr. Shepherd had arrived at Pit Martin's Bar and Restaurant with a friend, Albert Whyte. Both men are black. They wished to be admitted to the back room dance area, and they joined the line-up inside Pit Martin's at the entryway to the dance area. A few white persons were ahead of them in the line-up, and Shepherd and Whyte watched as these individuals paid the \$5.00 cover charge and were let into the back room. When Shepherd and Whyte reached the head of the line, the doorman, whose name they did not know, announced that Shepherd and Whyte would have to pay a \$10.00 cover charge each. Both men testified that they had been patrons of Pit Martin's on a number of occasions prior to this, but this was the first time they had been charged \$10.00. Shepherd and Whyte questioned why they should have to pay a higher charge, but the doorman stood his ground and insisted on \$10.00.

Mr. Shepherd then left the line and went to the front section of the restaurant. "I felt the price was wrong and it was price discrimination at the time," he testified. Shepherd asked another patron of the bar, a white man, to inquire about the price. This man went to the back area to ask. He returned and told Shepherd that it was "\$5.00 plus two free drinks." Shepherd and Whyte went back to the line-up a second time to

complain about the price discrepancy. At this point Mr. Luigi Lisi came over and backed up the doorman's decision. "I'm the manager. I charge what I want to get in here and if you don't pay, you can leave or I'll bounce you out," Mr. Lisi told Shepherd.

Mr. Whyte's evidence differed from Mr. Shepherd's evidence in that he could not recall dealing with a doorman at this time and he remembered the conversation with Mr. Lisi only. After having observed the witnesses, I have decided to accept Mr. Shepherd's evidence over Mr. Whyte's on this point. Mr. Shepherd gave more detailed evidence, and seemed to recall the incident with greater clarity.

The two men continued the discussion with Mr. Lisi for a while, demanding an explanation for the price differential. Mr. Lisi kept repeating that he was the manager and could charge what he wanted to, and ultimately Shepherd and Whyte left. Mr. Shepherd went to the police station to file a complaint, and was referred from there to the Ontario Human Rights Commission.

The second incident occurred prior to the first, late in 1983. Pit Martin's had a reputation as a "hot" spot at the time, and there was a line-up not just to get in to the back room, but outside the front entrance to Pit Martin's bar, on the street. The line was a long one, and the doorman would select people from

time to time for admission. Mr. Shepherd testified that all of the people the doorman selected for entry were white. "There were a few of us [blacks] waiting in line...but no black person [was] asked to go in at that time." Some of the whites selected were in front of Mr. Shepherd, some were behind.

Mr. Whyte told of a similar experience, in which a white woman who was in her 40s and appeared to be the on-duty manager also selected whites in preference to blacks in line. He also testified that Mr. Lisi came to pick people out of the line for admission, and he also selected only whites. "I came to the conclusion that maybe they didn't like the looks of me. They didn't want to let me in because I was right up close to the front and they came in, picked the people out of the front of us and in the back of us and they didn't get to us," Whyte stated. When he asked the female manager why they were not let in, she replied that the fire marshall would not allow any more people. Whyte waited in line for half an hour, or forty-five minutes, and then left.

Counsel for Bama Artisans, Inc. questioned both Shepherd and Whyte about a system of "Back Room Club Cards" that had been instituted for a time in 1983. Apparently Glenda McKenzie, a night manager at Pit Martin's, had attempted to set up a system of membership cards, so that regular patrons would not have to

wait in line to get into the back room. However, according to Mr. Shepherd and Mr. Whyte, no one asked the people in line whether they held membership cards when the selections were made.

The third incident also occurred in late 1983. On this occasion, Mr. Shepherd testified that he and some friends had been admitted to Pit Martin's back room area and were dancing there on a weekend evening. Mr. Lisi was the disc jockey on duty at the time. Mr. Keinnan Thomas, a black friend of Mr. Shepherd's, went up to Mr. Lisi to make a request for a particular song. Lisi said, "It's getting pretty dark in here", changed the music style, and told everyone to leave the dance floor.

Mr. Shepherd testified that Lisi had been playing music that would have been described in 1984 as "disco or funk or dance music". He changed it to country and western music. Mr. Shepherd took the music change as a clear message that blacks were unwelcome. "The type of music brought us there in the first place...the type of music that was playing...was liked by blacks, the majority of blacks and this country and western was just not in our history. I think it was a definite effort...to discriminate against black people."

When Lisi changed the music so dramatically, the dance floor cleared. It was almost midnight at this point, but Mr. Shepherd

and his friends waited around for half an hour to see if the dancing would resume. During this time Mr. Lisi began to readmit people to the dance floor, walking up to some groups and asking them to come back in. All of the people he readmitted while Mr. Shepherd waited were whites.

Counsel for the Commission called several additional witnesses on the complaint. Heidi Hurst, a black woman, testified that she was a regular at Pit Martin's. Although she did not drink, she stated that she went there once or twice each weekend to dance in the back room. She recounted continuing difficulties with admission. On many occasions, whites standing behind her in line were allowed in before she was. In one case, a white female friend she had come with was admitted while she was refused. "Mostly every time I went I had a problem getting into the back room," she claimed. Mr. Lisi, who was often in charge of admitting people, apparently denied her entry, specifically stating that there were too many black people already in the back room.

Heidi Hurst also testified that she overheard Mr. Lisi tell a doorman that no more blacks were to be let in, "because there were too many of us in there as it [was]" and "they can't have a lot in there at one time." Ms. Hurst had asked a doorman why she was not allowed in, and he told her he was acting under the orders of Mr. Lisi. On another occasion, she testified that she

was ostensibly refused admission because she did not have a membership. When she asked where she could get a membership, she was refused the information.

Mr. Hubert Martin, president of Bama Artisans Inc., later revealed that the membership cards had been an "ill-conceived" plan of his night manager, who was concerned about regular patrons having to wait in line to get into the premises. She had gone to a printing shop to have some cards made up, entirely on her own initiative. The new system apparently caused a number of black persons to suspect that the cards had been introduced to cover up an admissions policy that was racially discriminatory. Representatives of the Windsor Black Coalition met with Mr. Martin to complain. He put an end to the membership card system approximately ten days after it had been initiated.

Ms. Hurst also related an incident that occurred while she was in the back room. "A black guy was dancing with two white girls and I myself thought they were dancing really good and he [Mr. Lisi] turned the lights on and told everybody to get out...." Ms. Hurst added that several black males had gone to try to talk to Mr. Lisi about this. Mr. Lisi "was hollering at them and they had words back and forth and then...he told us all to get out and everybody left the floor and then they turned the lights...back out and turned the music back on and I went to get in line to go back in and I couldn't go back in." Only whites

were permitted entry subsequent to this incident.

Counsel for Bama Artisans Inc. asked Ms. Hurst why she patronized Pit Martin's so regularly given this type of treatment. She replied that racism was present at "the majority of bars in Windsor". She added with some emotion and eloquence: "At that point I was fed up with being refused because of my colour and it just happened that Pit Martin's was the place where I said I'm not going to let them refuse me just because of the colour of my skin."

The last witness called by the Commission was Tyron Hurst, brother to Heidi Hurst. He also described himself as a regular patron of Pit Martin's, and recounted a line-up incident quite similar to those described by the previous witnesses. He testified that he was in line with his cousin and a group of his friends. White people behind them were let in while they were left standing in line. They asked why they couldn't get in, and Mr. Lisi told them they would have to wait until "some of you" came out. Mr. Hurst queried, "What do you mean, 'some of you'?" Lisi replied, "some of the people". Hurst pressed further: "Well, that shouldn't make a difference because you took the people from behind us, so in other words, you're saying some of us blacks." "He [Mr. Lisi] just smiled, and that was it," concluded Hurst.

Tyron Hurst testified that Mr. Lisi had told him he was supposed to have a membership card to get in, but that when he had asked how to get one, he had been told to come back next week. The next week, he was told the same thing.

Tyron Hurst also described an incident that occurred in the men's washroom at Pit Martin's. He and some of his black friends were in the washroom when one of the doormen came in. The doorman apparently said: "Louie [Mr. Lisi] was right, there's too many blacks in here". Hurst testified that he and his friends replied, "There was no reason for you to say that. What do you mean there's too many blacks. Who told you that?" The doorman answered, "Well, there was just too many."

The foregoing evidence was not contradicted by witnesses for any of the respondents. Mr. Lisi, who chose to represent himself and Dance Music Disc Jockey Service personally, conducted a fairly lengthy cross-examination of Mr. Shepherd. This cross-examination did not elicit any relevant contradictory testimony from the witness. Mr. Lisi subsequently left the hearing and did not return. As a result, he gave no evidence in chief, was not subjected to cross-examination, and called no witnesses. Bama Artisans Inc. called only one witness, Mr. Hubert Martin, and his evidence went to the issue of legal liability for these incidents. Mr. Martin did not call into question the evidence of the Commission's witnesses. Indeed, he stated, "I don't doubt

that they are telling the truth...."

DECISION

The evidence indicates clearly that Mr. Donovan Shepherd, the complainant, was not accorded equal treatment with respect to services and facilities and that he was discriminated against because of his race and colour.

Mr. Shepherd was asked to pay an admission fee to obtain entry into the back room at Pit Martin's Sports Bar and Restaurant that was double what white persons were asked to pay. He was left standing in line on the street, awaiting admission to the entrance of Pit Martin's bar, while white persons behind him were permitted entry. He was asked to leave the dance floor amidst circumstances that suggest a racial motivation, and he was not permitted to re-enter when dancing resumed. White persons were permitted to re-enter.

Evidence from the other Commission witnesses corroborates and adds to Mr. Shepherd's testimony. Since these other witnesses are not complainants, however, they have not sought to establish liability or remedial assistance with respect to themselves. Their evidence simply goes to strengthen the testimony of Mr. Shepherd, and give further credence to his

assertions.

There has been a violation of the provisions of the Ontario Human Rights Code. The issue that remains to determine is who is responsible for this. The evidence indicates that Mr. Luigi Lisi and Dance Music Disc Jockey Service (the business entity that Mr. Lisi runs) breached the Code.

Mr. Lisi figures prominently in the first incident, where Mr. Shepherd was asked to pay a \$10.00 admission fee to gain entry to the back room. According to Mr. Shepherd's testimony, he was not involved in the second incident, where Mr. Shepherd was left standing in line while white persons behind him were selected for admission. In that incident, a doorman made the discriminatory admission decisions. However, Mr. Whyte's corroborating evidence reveals that Mr. Lisi manifested similar behavior in another line-up situation. In the third incident, the music was stopped, and patrons were removed from the back room, and readmitted only on a discriminatory basis. Mr. Lisi was the sole individual responsible here. This is clearly enough evidence upon which to base a finding of responsibility against Mr. Lisi and against his business, Dance Music Disc Jockey Service. It was not revealed during the hearing whether Dance Music Disc Jockey Service was a corporation or a sole proprietorship, but as the business entity under which Mr. Lisi ran his disc jockey operation, it is liable along with him.

The responsibility of Bama Artisans Inc. is somewhat more difficult to resolve. Most problematical is the evidence with respect to the third incident, in which Mr. Lisi changed the music, cleared the dance floor and then re-admitted white patrons only. These facts appear to relate to Mr. Lisi only and not to Bama Artisans Inc. This was drawn to my attention by counsel for Bama Artisans, who argued that Mr. Lisi, an independent contractor, alone was responsible for this.

Argument followed, in which counsel for the Commission attempted to assert that Mr. Lisi was an employee of Bama Artisans, thus making Bama responsible for Lisi's conduct. Counsel for Bama argued that Lisi was an independent contractor. The hearing elicited little relevant evidence concerning the indicia of employment. Fortunately the evidence is such that I am not required to determine whether Mr. Lisi was an employee.

Mr. Hubert Martin testified that as president of Bama Artisans Inc., and responsible for overseeing its operations, he was present at Pit Martin's on a full-time basis, six or seven days a week. He had engaged Mr. Lisi and his Dance Music Disc Jockey Service to handle the music for the back room on a continuing basis as of the fall of 1982. He had ample time to see for himself how Mr. Lisi operated. Indeed, he admitted that he received complaints about Mr. Lisi, as often as weekly.

Servers and bartenders objected that Mr. Lisi "went around in the back room like he was the owner or something" and that he was often "meddling" in the affairs of the restaurant.

Mr. Martin heard complaints from his staff immediately following the incident in which Mr. Lisi cleared the back room. Mr. Martin spoke to Mr. Lisi about this, and Lisi explained that he had thought "trouble was brewing". Mr. Martin did not object to Mr. Lisi's actions. Indeed, he testified that he felt it was not his place to do so. "Maybe it was a good move, maybe it was a bad move," Martin stated.

During his cross-examination of Mr. Martin, counsel for the Commission introduced a copy of a news clipping from the Windsor Star, dated 2 April 1984. The clipping reported on an interview between Windsor Star reporters, Mr. Martin and Mr. Lisi. The article described "racial tension" between Arabs and blacks that had been mounting around the that time. Lisi made several statements regarding the tensions present inside Pit Martin's bar. Counsel read the following extracts from this clipping:

"In the face of such tension, he [Mr. Lisi] said, music plays an important part in controlling the mood of the bar's clientele. 'Tonight', Lisi said, 'it's about 90-10' (90 per cent white, 10 per cent black) and he said he was not particularly concerned about what kind of music he played. But if more than an 'acceptable' number of black patrons show up, the music changes to 'Top 40s, rock and roll, they can't stand that and they leave.' He said that number would be '30 per cent blacks.'

Counsel then asked Mr. Martin, "Now, knowing what you know about Mr. Lisi, do those kind of comments surprise you?" Mr. Martin's response was "Probably not." This news clipping, it should be noted, constitutes hearsay evidence. It was introduced, however, not for the Board to determine the truth or falsity of the statements, but as evidence from which to draw an inference that Mr. Martin had forewarning of Mr. Lisi's character and behavior.

Martin did take it upon himself to reproach Mr. Lisi for some of his interference in the process of admissions to the back room. He instructed him that his job was to play music only, and that he had no responsibility in regulating admission to the back room. However even Mr. Martin acknowledged that he was aware of Mr. Lisi's inability to follow these instructions: "He's a chronic disturber, you can't stop him...." he conceded.

Mr. Martin was adamant that the policy of his restaurant and bar was a \$5.00 admission fee, and that Mr. Lisi had had no authority to request \$10.00 from Mr. Shepherd. When he questioned Mr. Lisi about the \$10.00 incident, Lisi apparently told him that he "didn't like" Shepherd, that "the guy was a troublemaker." Mr. Martin told Mr. Lisi that he could not charge \$10.00, but he took no further disciplinary action.

Given the amount of disturbance that Mr. Lisi caused, one wonders why Mr. Martin chose to retain his services. Mr. Martin

conceded that as president of Bama Artisans Inc. he had the authority to dismiss Mr. Lisi and Dance Music Disc Jockey Services. The reasons he did not do so appear to be two-fold. First, Mr. Martin seemed to want to continue working with Mr. Lisi on compassionate grounds. He told the board that Mr. Lisi was a "type of guy" for whom he had some sympathy: "I understood him, you know, that's why he was there". Second, business considerations were important. Mr. Lisi "wasn't too expensive" and he kept his equipment at Pit Martin's permanently, unlike other disc jockeys who moved their equipment in and out frequently. Also, Mr. Martin testified that Mr. Lisi had attracted a large following. "The room was full all the time. Obviously it was a popular place."

Mr. Martin testified that he did not endorse Mr. Lisi's discriminatory behavior himself, but he also indicated that despite the complaints he had received, he had doubts about whether Mr. Lisi had behaved improperly. He emphasized that when he looked into the back room, he would see white and black individuals dancing. "When I see blacks and whites in the room, I don't think that anybody is discriminating against blacks." For this reason, he tended to discount the stories about Lisi's behavior.

This evidence indicates that Mr. Martin was aware of Mr. Lisi's actions. Although he did not personally countenance this,

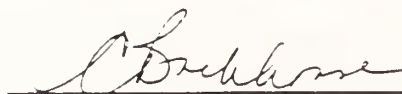
he contracted with Mr. Lisi to provide entertainment on his premises. Mr. Lisi represented to the public that he was the manager of Pit Martin's, and Mr. Martin did nothing to inform patrons otherwise. Mr. Martin knew of Mr. Lisi's inability to respond to instructions, and yet he did not move to dismiss him or discharge his services upon learning of Mr. Lisi's racially-motivated behavior. His reliance upon the fact that some black individuals continued to come to Pit Martin's, and that some were admitted to the back room at some times, was short-sighted. The mere presence of black persons does not in itself dispel the possibility of discriminatory behavior. Mr. Martin's decision to continue Mr. Lisi's services, based on both personal and business reasons, implicates his corporation.

Even if this were not so, Bama Artisans Inc. appears liable based on the evidence in connection with the first two incidents of race discrimination. It was Bama Artisan's employee, the doorman/bouncer, who first announced to Mr. Shepherd and Mr. Whyte that the cover charge was \$10.00. It was Bama Artisan's employees, a doorman/bouncer and a female manager, who selected individuals from the line-up outside Pit Martin's premises in late 1983. This is sufficient to find that Bama Artisans Inc. shares responsibility for these incidents.

With respect to a remedy, Pit Martin's Sports Bar and

Restaurant is no longer in operation, and the only appropriate order would appear to be one for damages to Mr. Shepherd. The complainant was denied services because of his race and colour, and this denial of equal treatment constitutes a specific head of damages. Taking into account all of the circumstances, I award Mr. Shepherd the sum of \$1500. This amount should be apportioned between the respondents, with Mr. Lisi bearing 75% and Mr. Martin 25%. For the total sum, however, the respondents are jointly and severally liable. In view of the arguments made by counsel for Bama Artisans Inc. regarding the extensive delay incurred before the final hearing, I have decided that this is not an appropriate case in which to award interest.

DATED at London, this 10th day of May, 1988.



Board of Inquiry

